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COMMISSION  
SECRETARIAT

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	2006 AUG 10 A 9:32
ITC Research, <i>et al.</i>	)	MUR 5585
Unknown Respondents	)	MUR 5601

**SENSITIVE**

**GENERAL COUNSEL'S REPORT #2**

**I. ACTIONS RECOMMENDED**

Find no reason to believe that Mitchell Research & Communications, Inc., Steve Mitchell, SurveyUSA, Fred R. Bierman, Hon. Nancy Pelosi and the Democratic Congressional Campaign Committee ("DCCC") violated the Act; dismiss the complaint as to ITC Research and USA Public Opinion Group; take no further action against "Unknown Respondents" and close the file.

**II. BACKGROUND**

MURs 5585 (into which MUR 5584 was merged) and 5601 primarily involve allegations that certain persons or unknown persons made automated "push poll" telephone calls without disclaimers to individuals residing in a number of Congressional districts across the country in or around October 2004. *See* MUR 5584/5585 First General Counsel's Report; MUR 5601 First General Counsel's Report.

The calls were made shortly before the November 2004 election, specifically mentioned the candidates for election in the districts where the calls were made, and discussed tax issues or job outsourcing. For example, the calls made to recipients in North Carolina's 11<sup>th</sup> Congressional District stated that the incumbent congressman supported a national sales tax that would force taxpayers to pay "billions more in taxes,"

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1 and that the challenger opposed the tax. The calls ended by asking recipients to press one  
2 button to indicate support for the opponent and another button if they supported the  
3 incumbent. Some of the calls did not identify any sponsor while others provided the  
4 names of apparently fictitious entities without including any payment or authorization  
5 information.

6 Based on the available information, the Commission found reason to believe in  
7 MURs 5585 and 5601 that "Unknown Respondents" violated 2 U.S.C. § 441d. As  
8 discussed below, the evidence obtained thus far has not revealed who was responsible for  
9 the phone calls, and we are not optimistic that further efforts would be successful.

10 **III. RESULTS OF INVESTIGATION**

11 After the Commission authorized an investigation, we contacted three of the four  
12 complainants to learn more details about the phone calls at issue.<sup>1</sup> Although we obtained  
13 several phone numbers of individuals who received the calls, the complainants were not  
14 able to offer precise details about dates and times the calls were received, other than  
15 "October 2004." Following our initial inquiries, however, one of the complainants  
16 informed us that he had received a similar phone call in March 2006 and was able to  
17 provide the exact date and time it was received.<sup>2</sup> He also stated that, although his  
18 telephone service did not include "Caller ID" capability, he pressed \*69 in an attempt to  
19 discover the source of the call and was notified by a recording that the caller was

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<sup>1</sup> One of the three complainants we contacted informed us he was the brother of the remaining complainant; the information he provided made it unnecessary for us to reach out to that complainant, who was unavailable at the time.

<sup>2</sup> The complainant stated that the automated call criticized the incumbent congressman for supporting outsourcing of jobs and that the voice sounded the same as the voice on the sales tax calls. However, unlike the previous calls, no other candidates were mentioned and there was no request to press buttons to indicate support or opposition.

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1 "unknown." For other call recipients with Caller ID who tried to ascertain the number  
2 and identity of the callers, we were informed that their Caller ID devices stated that the  
3 information was unavailable, possibly indicating that the calling party or parties were  
4 using special equipment to block transmission of the source number and caller name.

5 Based on the above information, we directed a subpoena to BellSouth  
6 Telecommunications, Inc. – which carried some of the recipient phone numbers –  
7 requesting incoming call information for several numbers during the relevant time  
8 periods.<sup>3</sup> Regarding the March 2006 phone call for which we knew the specific time and  
9 date, the phone record showed a 45-second long distance call being placed to the subject  
10 number at the time indicated. However, the record displayed a blank space where the  
11 source number for the incoming call would normally appear, as did the October 2004  
12 records of other "push poll" call recipients for several calls of similar duration.<sup>4</sup> We then  
13 attempted to track down the source number of the March 2006 phone call through the  
14 long distance carrier (Sprint Nextel Corp.), but such records provided only the area code  
15 and prefix, i.e., the last four digits were omitted.<sup>5</sup>

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<sup>4</sup> Regarding incoming calls for which the phone records displayed source numbers instead of blank spaces, our review did not reveal any source numbers common to all the available recipient numbers, or any source numbers that might otherwise suggest they belonged to the responsible party or parties.

<sup>5</sup> Although we identified Pacific Bell as the carrier of the source number, personnel in that carrier's compliance department informed us they did not have the capability to determine the last four digits with the information at hand, adding that it was not unusual for the long distance carrier to fail to capture the last four digits. Our review of the businesses that shared the area code and prefix did not reveal any likely candidates as the source of the call.

1 Based on the information we have gathered to date, we believe it unlikely that  
2 further investigation would uncover any useful information leading us to the party or  
3 parties responsible for calls at issue.

4 **IV. RECOMMENDED DISPOSITION OF RESPONDENTS**

5 With regard to respondents ITC Research, USA Public Opinion Group, Mitchell  
6 Research & Communications, Inc., Steve Mitchell, SurveyUSA and Fred R. Bierman, the  
7 Commission voted to take no action pending the investigation. The complainant who  
8 alleged these individuals and entities violated the Act informed us that the names were  
9 included in the complaint based solely on public searches of ITC Research and  
10 USA Public Opinion Group, the two entities identified in the phone calls. The  
11 complainants have been unable to provide any other information linking them or any  
12 other entities or individuals to the phone calls, and they acknowledge that at least two  
13 ~~respondents—SurveyUSA and Fred Bierman—~~ were mistakenly included in the  
14 complaint.

15 As set forth in more detail in the First General Counsel's Report, Mr. Mitchell and  
16 Mitchell Communications assert that they were not involved, and Mr. Bierman and  
17 SurveyUSA claim this is a case of mistaken identity. The complaint described  
18 Mr. Mitchell as Chief Executive of ITC Research and Mitchell Communications, but  
19 Mr. Mitchell, in his response and during a telephone interview, categorically denied any  
20 knowledge of the phone calls at issue or any entity called ITC Research. He pointed out  
21 that he and his firm Mitchell Communications have never made or authorized "push poll"  
22 calls and that his political clients are primarily Republican, so it would make little sense  
23 for him to be involved with communications that were uniformly anti-Republican.

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1 Mr. Bierman's response, in the form of a sworn affidavit, explicitly stated that he,  
2 SurveyUSA and its affiliates were not involved in the calls described in the complaint  
3 and have no connection to any entity called USA Public Opinion Group. Because we  
4 have not obtained any evidence inconsistent with their denials or that might otherwise  
5 connect them to the "push poll" phone calls, we recommend that the Commission find no  
6 reason to believe that Mitchell Research & Communications, Inc., Steve Mitchell,  
7 SurveyUSA and Fred R. Bierman violated the Act.

8 The investigation, which has included comprehensive searches of business and  
9 various other databases, has not uncovered any relevant information regarding the two  
10 entities identified in the phone calls (ITC Research and USA Public Opinion Group),  
11 leading us to conclude they are probably fictitious names used to mask the true identities  
12 of the responsible party or parties. Accordingly, we recommend that the Commission  
13 dismiss the complaint in MUR 5585 as to ITC Research and USA Public Opinion  
14 Group.<sup>6</sup>

15 One of the complaints also alleged that the DCCC and Rep. Nancy Pelosi were  
16 involved in the phone calls, claiming they "conspired" to violate the disclaimer and other  
17 provisions of the Act in order to influence the election for President and certain  
18 Democratic candidates. The complaint noted that the DCCC conducted a direct-mail  
19 campaign criticizing Republican candidates for Congress who supported a national sales

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<sup>6</sup> - A transcription of a "push-poll" call provided by the complainant in MUR 5601 identified the responsible entity as "Voter Research Group." As with ITC Research and USA Public Opinion Group, we have not uncovered any relevant information regarding this entity, leading us to conclude it is probably a fictitious name.

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1 tax plan, and that Rep. Pelosi criticized such a plan orally and in writing.<sup>7</sup> As discussed  
2 in the First General Counsel's Report, the DSCC's treasurer submitted an affidavit  
3 asserting that the DSCC did not pay for the phone calls and had no knowledge of them.  
4 Rep. Pelosi argued that the facts alleged simply demonstrate that she spoke out against a  
5 national sales tax, and that she referenced the national sales tax as one of several issues  
6 that Democrats would likely use to target Republicans in the 2004 election. Because the  
7 investigation has not uncovered any evidence linking these respondents to the phone  
8 calls, we recommend that the Commission find no reason to believe that Nancy Pelosi  
9 and the Democratic Congressional Campaign Committee and James J. Bonham, in his  
10 official capacity as treasurer, violated the Act.

11 At this juncture there appears to be little likelihood of locating the responsible  
12 party or parties, and pursuing this matter would require the Commission to expend  
13 additional staff time and resources without the prospect of yielding any useful  
14 information. Given these circumstances, we recommend that the Commission take no  
15 further action as to "Unknown Respondents" in MURs 5585 and 5601 and to close the  
16 file in these matters.

## 17 V. RECOMMENDATIONS

### 18 MUR 5585

- 19 1. Find no reason to believe that Mitchell Research & Communications, Inc.,  
20 Steve Mitchell, SurveyUSA, Fred R. Bierman, Hon. Nancy Pelosi and the  
21 Democratic Congressional Campaign Committee and James J. Bonham, in  
22 his official capacity as treasurer, violated the Act.

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<sup>7</sup> The complaint included a DSCC mailer criticizing a federal candidate for supporting a national sales tax plan, but the mailer included disclaimer information as required by the Act and regulations.

2. Dismiss the complaint as to ITC Research and USA Public Opinion Group
3. Take no further action as to Unknown Respondents.
4. Close the file.
5. Approve the appropriate letters.

MUR 5601

6. Take no further action as to Unknown Respondents.
7. Close the file.
8. Approve the appropriate letters.

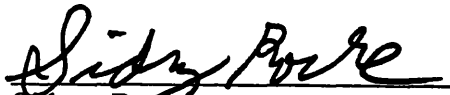
Lawrence H. Norton  
General Counsel

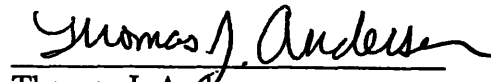
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